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Report of the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana*

Summary

In the present report, the Special Rapporteur on the situation of human rights in Myanmar, Tomás Ojea Quintana, looks at the current situation of human rights in Myanmar and reflects on the extent of the progress made during the course of his six years as the mandate holder.

* Late submission.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Myanmar was established pursuant to Commission on Human Rights resolution 1992/58 and was recently extended by the Human Rights Council in its resolution 22/14. The present report, submitted pursuant to Council resolution 22/14 and General Assembly resolution 68/242, covers human rights developments in Myanmar since the reports of the Special Rapporteur to the Council in March 2013 (A/HRC/22/58) and to the Assembly in October 2013 (A/68/397). The present report to the Council is the last by the current mandate holder before the end of his six-year term in May 2014.

2. From 14 to 19 February 2014, the Special Rapporteur conducted his ninth mission to Myanmar. He expresses his thanks to the Government for its cooperation during the visit. He visited Thailand from 10 to 13 February 2014 and also expresses his thanks to the Government of Thailand for its cooperation.[1]

3. He continued to engage with the Government of Myanmar through its Permanent Representatives in Geneva and New York. He sent nine joint communications between 1 June and 30 November 2013 and, by 31 January 2014, the Government had replied to eight of those communications.[2]

II. Human rights situation

A. Prisoners of conscience

4. The Special Rapporteur highlights the release of prisoners of conscience as one of the most significant achievements of the Government of Myanmar. Since May 2011, there have been 15 presidential amnesties, resulting in the release of over 1,100 prisoners of conscience. The most recent amnesty, announced by the President on 30 December 2013, was aimed at fulfilling his pledge in July 2013 to release all political prisoners by the end of the year. The Special Rapporteur highlights that about 33 prisoners of conscience remain in detention, including Tun Aung, Kyaw Hla Aung and three international non-governmental organization (NGO) workers in Rakhine State. In Sittwe prison, he met with a Rohingya prisoner of conscience, Than Shwe, who had been detained because he had reportedly tried to meet with the Special Rapporteur during his visit to Buthidaung in August 2013. Furthermore, people are still being arrested and imprisoned for their peaceful political activities in Myanmar.

5. The Special Rapporteur notes that the presidential pardon of 30 December 2013 included those convicted and being prosecuted under the Peaceful Assembly and Peaceful Procession Act, the Unlawful Associations Act, articles 122, 124 (a) and 505 of the Penal Code, the Law to Safeguard the State from the Danger of Subversive Elements and the Emergency Provisions Act of 1950. However, the Special Rapporteur highlights that those

[1] For details of the ninth mission, see: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14263&LangID=E.

[2] Links to the communications referred to herein are contained in the communications reports of special procedures mandate holders submitted to the Human Rights Council at its twenty-fourth (A/HRC/24/21) and twenty-fifth (A/HRC/25/74) sessions.

laws remain on the books and new prosecutions are taking place under them, and urges the Government to expedite their abolition/amendment.

6. The Special Rapporteur commends the work of the prisoner review committee set up in February 2013 to identify remaining prisoners of conscience. He recommends that the Government continue to convene meetings of that committee and, furthermore, upgrade the status of the committee to enable it to investigate suspected cases of prisoners of conscience, including in Rakhine State, which entails access to prisons and the authority to question relevant state officials.

7. Referring to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the Special Rapporteur highlights the obligations of the State to former prisoners of conscience, which include equal and effective access to justice; adequate, effective and prompt reparation for harm suffered; and access to relevant information concerning violations and reparation mechanisms. Reparations involve restitution, including restoration of the enjoyment of human rights and of employment; compensation, including for economically assessable damage; rehabilitation, including medical and psychological care as well as legal and social services; satisfaction, including public disclosure of the truth, the restoration of the dignity, reputation and rights of the victim and a public apology; and guarantees of non-repetition, including ensuring effective civilian control of military and security forces and strengthening the independence of the judiciary. The Special Rapporteur is concerned that former prisoners of conscience are required to declare criminal records when applying for jobs, education or vocational training. This has a detrimental effect on their right to work and their access to education. Other difficulties faced on release included access to passports.

B. Conditions of detention and treatment of prisoners

8. The Special Rapporteur remains concerned about the ongoing practice of torture in places of detention in Myanmar and the absence of accountability. He recently wrote to the Government regarding the emblematic cases of Myo Myint Swe and Than Htun; the Government has provided formal replies.[3] During his latest visit, the Special Rapporteur met with the family of Than Htun. Despite the extensive evidence to support the allegation that the police tortured Than Htun to death while he was in police custody, township and district level courts have refused to let the family file a criminal case against the police. The Special Rapporteur has also continued to receive allegations from Kachin State and northern Shan State that the military are arbitrarily detaining and torturing, during interrogation, young men suspected of belonging to ethnic armed groups.

9. Currently, prompt, effective and impartial investigations into allegations of torture against police and military personnel do not take place in Myanmar. For instance, no action has been taken on the Special Rapporteur's previous recommendation (A/68/397, para. 91 (i)) for an investigation into allegations of torture in Buthidaung prison. Furthermore, military and police personnel who are found to be responsible for committing acts of torture are not being transparently held to account through the criminal justice system and punished in a manner commensurate with the gravity of the offence. In the case of Myo Myint Swe, the responsible police personnel were subjected only to internal disciplinary measures, involving transfers, dismissals and reduction of police service.

[3] See A/HRC/23/51, p. 10, and A/HRC/25/74, p. 46.

10. During his latest visit, the Special Rapporteur noted some positive steps towards tackling the practice of torture, including, as reported by the Minister of Home Affairs, the use of closed-circuit television (CCTV) cameras in all city police stations. He was informed by the Chief Justice that district and high court judges were now utilizing their powers under the new Judiciary Act to conduct prison inspections and sending recommendations to the Cabinet. He also notes the Government's continuing good cooperation with the International Committee of the Red Cross following the resumption of prison visits in January 2013.

11. On 2 January 2014, the President issued an order which commuted all death sentences to life imprisonment. The Special Rapporteur commends this move and recommends the abolition of the death penalty in Myanmar.

C. Freedom of opinion and expression

12. The Special Rapporteur notes the remarks made in December 2013 by the President, Thein Sein, that Myanmar would have an open and free society only if the ongoing political reforms continued.[4] Since 2011, Myanmar has enjoyed a significant opening of space for people to exercise their right to freedom of opinion and expression. This has been seen in particular with the development of greater press freedom, which constitutes one of the cornerstones of a democratic society.

13. However, the Special Rapporteur highlights that there is a long way to go before Myanmar has a free, uncensored and unhindered press. During his latest visit, journalists described the prevailing climate of uncertainty, intimidation and fear of arrest, particularly if reporting dealt with issues too close to the interests of the military or other powerful elites. The Special Rapporteur underlines that this uncertainty is linked to the absence of the rule of law in Myanmar, in particular in the sense that the law is not accessible, intelligible, clear or predictable; the laws of the land do not apply equally to all; and the laws do not afford adequate protection to fundamental human rights, including freedom of opinion and expression.

14. On 17 December 2013, *Daily Eleven* reporter Ma Khaing, who was pursuing a story on corruption, was sentenced to three months in prison by a court in the Kayah State capital Loikaw (three months for trespassing, one month for defamation and one month for abusive language, to be served concurrently). In February 2014, an ethnic Rohingya Member of Parliament, Shwe Maung, was questioned over comments he reportedly made to the Democratic Voice of Burma news agency alleging police involvement in a fire that occurred in Maungdaw. Also in February, four journalists and the Chief Executive Officer of the *Unity* newspaper were arrested in connection with a report dated 25 January alleging the existence of a government chemical weapons factory in Magway Region and charged under article 3 (1) (a) of the 1923 State Secrets Act.

15. The Special Rapporteur highlights that extreme care must be taken by States to ensure that laws relating to national security are applied in a manner that conforms to international human rights standards. For instance, laws should not be invoked to suppress or withhold information of legitimate public interest that does not harm national security, or be used to prosecute journalists or others for having disseminated such information. Furthermore, when a State invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of

[4] See www.myanmargeneva.org/pressrelease/radio%20speech%201%20dec.pdf.

the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.

16. The Special Rapporteur highlights that the value of uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain. Imprisonment for defamation is disproportionate to the offence and is never an appropriate penalty.

17. To help avoid resorting to criminal sanctions against journalists, the Special Rapporteur encourages the Ministry of Information to make greater use of the Interim Press Council to resolve disputes while ensuring that the right to freedom of opinion and expression is fully upheld. He also encourages reference to general comment No. 34 (2011) of the Human Rights Committee, which provides guidance on the implementation of the right to freedom of opinion and expression that is particularly relevant to Myanmar at this point in its democratic transition.

18. The Media Bill, drafted by the Interim Press Council, and the Printing and Publishing Enterprise Bill, drafted by the Ministry of Information, have both been passed by the lower and upper houses of the parliament and are now with the Union Assembly. The Special Rapporteur received assurances from the Minister of Information that the Ministry's bill had been amended to remove the power of a registration official, situated in the Ministry of Information, to grant and revoke publishing licences, and that the registration procedure with criminal penalties for violations had been replaced with a voluntary acknowledgement procedure which would play more of an enabling role for publishers, for example, in helping to resolve copyright disputes. While encouraged by those assurances, the Special Rapporteur is unclear on the details of the revisions and is still concerned about the remaining government licensing powers and content regulation in the draft law. He urges the Union Assembly to take into consideration his previous concerns regarding that bill (A/68/397, para. 16) when considering final amendments prior to adoption.

19. Laws that have previously been used to violate the right to freedom of opinion and expression remain on the books, including the 2004 Electronic Transactions Act and the 1950 Emergency Provisions Act. The Special Rapporteur was assured by the Minister of Information that those laws were currently being reviewed by respective departments and the parliament to ensure they were "in conformity with the current situation". The Special Rapporteur has yet to see the final outcome of the review of the laws or the passing of new laws relevant to media freedom, including a new broadcast media bill. He calls for continued monitoring and engagement in the process by national and international actors to help ensure those laws meet international human rights standards.

20. The Special Rapporteur reiterates the importance of developing a culture of ethical and responsible journalism. He is encouraged by the countrywide consultative process that the Interim Press Council, in collaboration with International Media Support, is currently engaged in to establish a code of ethics for journalists, which he hopes will include elements to counter hate speech. He was encouraged to learn from the Minister of Information of the work being done to promote professionalism in journalism, which includes the planned opening in July 2014 of a journalism school offering one-year diploma courses, as well as the development of other journalism courses for students and practitioners across the country. He highlights the importance of also training government departments' newly appointed spokespersons in ethical engagement with the media.

21. The relationship between the proscription of hate speech and the flourishing of freedom of expression should be seen as complementary. The Special Rapporteur is concerned that the Government is not fulfilling its international human rights obligation to

tackle incitement to violence based on national, racial or religious hatred. Community-based, political and religious groups have been conducting, with impunity, well-organized and coordinated campaigns of incitement to discrimination, hostility and violence against Rohingya and other Muslim minorities. The Government has a duty, under international human rights law, to investigate the nature and extent of the harm caused to persons and groups as a result of hostility and violence incited on the basis of racial or religious hatred, and to hold the perpetrators to account with proportionate punishments. For further guidance on tackling hate speech in accordance with international human rights standards, the Special Rapporteur highlights general recommendation No. 35 (2013) of the Committee on the Elimination of Racial Discrimination.

D. Freedom of peaceful assembly and association

22. On 30 November 2013, President Thein Sein spoke of the need to restore the "long-weakened trust" between the Government and the people and of the Government's intention to intensify its cooperation with civil society organizations. While acknowledging the important progress Myanmar has made since 2011 in upholding the rights of people to freedom of peaceful assembly and of association, the Special Rapporteur remains concerned that important legislative changes have not yet taken place to allow the President's vision of further progress to be realized.

23. The presidential pardon of 30 December resulted in the pardoning of hundreds of people prosecuted for participating in peaceful assemblies. However, the problematic laws remain on the books and continue to be used; in January 2014, 10 people were charged under article 18 of the Peaceful Assembly and Peaceful Procession Act. People involved in protests concerning business and development projects, including land confiscation, remain particularly vulnerable to arrest. In Kachin State, the Special Rapporteur met with Bauk Ja, who had recently been released from detention following spurious charges the Special Rapporteur believes stem from her outspoken campaign against land confiscations in Hukaung Valley, Kachin State. Furthermore, the law is being applied in an arbitrary way, with other demonstrations that appear to align with Government interests being allowed to take place.

24. In February, the Chair of the Bill Committee of the upper house informed the Special Rapporteur that an amendment of article 18 of the Peaceful Assembly and Peaceful Procession Act was currently being discussed in the lower house and would later go to the upper house for consideration. The Special Rapporteur urges the parliament to ensure the amendment of article 18, including through the replacement of the permit system and criminal sanctions with a voluntary notification procedure (see A/68/397, para. 23).

25. The Attorney General informed the Special Rapporteur that discussions on repealing the Unlawful Associations Act and amending articles 143, 145, 152 and 505 of the Penal Code were ongoing in the parliament. The Special Rapporteur has been advocating for the amendment of those laws since the beginning of his mandate in 2008 and calls on the parliament to expedite their amendment.

26. The Special Rapporteur notes that a new associations law, to replace the 1988 Act relating to the Formation of Organizations, is still before the parliament. He welcomes the process of consultation with civil society and international organizations by the lower house's Public Affairs Management Committee and Bills Committee on the bill and is, moreover, encouraged that the consultation led to significant improvements in the draft law which addressed some of the concerns raised in his previous report (A/68/397, para. 25). Most notably, criminal penalties (imprisonment for up to six months) for joining an unregistered organization and the compulsory registration requirement were reportedly

removed. However, the Special Rapporteur is concerned by updates received just prior to publication of the present report that some parliamentarians were trying to reinsert those provisions, and urges the parliament to ensure that the law meets international standards.

E. Human rights concerns in the context of development

27. The Special Rapporteur reiterates the importance of establishing a system of individual titling and tenure rights for smallholders to protect people against land appropriation and forced evictions, as the process of economic development proceeds. He met with residents of a village in northern Yangon who had recently been forcibly evicted and their homes demolished after being told they were living in a military zone. Forced evictions constitute a gross violation of a range of human rights related to housing, health, education, livelihoods and security of person. Furthermore, a collective or communal tenure system for land, fisheries and forests should be put in place to protect the access of local communities to common goods and ensure that the land can be converted to new uses only with their free, prior and informed consent. Amendments to the Farmland Law and the Vacant, Fallow and Virgin Land Law are also required (see A/68/397, para. 29). The Special Rapporteur stresses that issues relating to land rights will be one of the primary challenges for the Government over the years to come, which can only be addressed by respecting human rights standards and principles.

28. The Special Rapporteur is concerned that, due to the absence of an independent judiciary and the rule of law, people are currently not able to challenge decisions on evictions or claim their rights to just compensation in a court of law. Furthermore, those trying to claim their rights by peacefully protesting forced evictions and land confiscations are being subjected to excessive use of force by the police, arbitrary arrest and detention and criminal prosecution. For example, in August 2013, 10 protestors were reportedly arrested by police while peacefully protesting with about 50 local villagers against the Letpadaung copper mine project in Monywa, and subsequently charged under article 18 of the Peaceful Assembly and Peaceful Procession Act. Nine of the protestors were reportedly released after having signed a declaration that they would not protest again. The remaining protestor, Naw Ohn Hla, was convicted by Monywa Court on 29 August 2013 under article 505 (b) of the Penal Code and sentenced to two years of imprisonment. She was subsequently released on 25 November 2013 following the 15 November presidential amnesty.

29. During the Special Rapporteur's visit to the copper mines of Monywa in the Sagaing Region, he met with local residents and listened to their grievances over the Letpadaung copper mine, including with regard to forced relocation, loss of livelihoods (in particular farmers who had lost the land they had worked for generations) and health problems related to the proximity of the project. He also met with two monks who had been left badly scarred following the use of incendiary devices by police in their attempt to clear a protest site in November 2012. He is concerned that many of the recommendations from the parliamentary commission set up to help address local grievances have not been implemented, and urges the Government to address that.

30. In Monywa, he met with youths from a local school in Kangone village, who described the detrimental effect on their health that they believed the sulphuric acid plant in nearby Mogyoe had caused. To help address those concerns, he urges the publication of the environmental and social impact assessment of the Letpadaung copper mine and prompt follow-up to the recommendations. Furthermore, he urges the Government to make environmental and social impact assessments a legal requirement for all large-scale development projects in Myanmar.

31. The Special Rapporteur also met, in Monywa, with representatives from Wanbao, the Chinese company active in developing the copper mine at Letpadaung, who expressed their commitment to addressing the concerns of the local community. The Special Rapporteur highlights the responsibility of all investors and businesses to abide by the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (A/HRC/17/31, annex). He recommends that human rights impact assessments be incorporated into the environmental and social impact assessments undertaken by large-scale development projects, which requires meaningful consultations with potentially affected groups before the start of the project. He also highlights the guiding principles on human rights impact assessments of trade and investment agreements (see A/HRC/19/59/Add.5) as providing pertinent guidance on how Myanmar can ensure that the trade and investment agreements it concludes are consistent with its international human rights obligations.

32. The Special Rapporteur is encouraged by the good progress Myanmar has made in recent months in preparing for Extractive Industries Transparency Initiative candidature. Membership will help to improve openness and the accountable management of revenues from natural resources. With the full disclosure of taxes and other payments made by oil, gas and mining companies, the public will be able to see how much the Government is receiving from the country's natural resources.

F. Situation in ethnic border areas

33. Ceasefire agreements have now been signed between the Government and 14 ethnic armed groups, which is a major achievement. The Kachin Independence Army and the Ta'ang (Palaung) National Liberation Army are the two major ethnic armed groups not to have signed. During his meeting with the Minister of the President's Office, U Aung Min, the Special Rapporteur learned of the efforts to secure a national ceasefire accord by April and the plans for subsequent political dialogue.

34. Fighting continues in Kachin State and northern Shan State, with military operations ongoing against the Kachin Independence Army, the Shan State Army-North and the Ta'ang (Palaung) National Liberation Army. During his drive from Myitkyina to Laiza, a non-Government controlled town in Kachin State, the Special Rapporteur witnessed the physical destruction the fighting had brought to villages since fighting restarted in June 2011 following the breakdown of a 17-year ceasefire. Clashes in October and November 2013 displaced more than 2,400 people in Mansi, southern Kachin State, including 1,600 people from Nam Lim Pa who were displaced for the second time to internally displaced persons' (IDP) camps bordering Chin State and northern Shan State. In total, some 100,000 people remain displaced in Kachin and northern Shan State. While in Laiza, the Special Rapporteur visited the Je Yang IDP camp to speak with people who had been violently displaced during military advances into their villages in August 2011, and listened to allegations of human rights violations suffered by their families and community members. This included more recent allegations of sexual violence against Kachin women and the arbitrary detention and torture, during interrogation, of young Kachin men. Since his previous report, the Special Rapporteur has continued to receive allegations of serious human rights violations accompanying military offensives. This includes allegations that more than 100 women and girls had been raped by army soldiers since 2010, and reports of 47 cases of gang rape and 28 women dying as a result of their injuries. Most of the cases are linked to the military offensives in Kachin State and northern Shan State since 2011.

35. Throughout his mandate, the Special Rapporteur has highlighted the widespread and systematic human rights violations that have accompanied the armed conflict in the ethnic

border areas and the absence of accountability. In advance of a national ceasefire accord that is implemented by all sides, he reiterates his call for military and non-State actors to abide by humanitarian and human rights law. Furthermore, he hopes to see included in the eventual nationwide ceasefire accord specific references to respect for human rights and humanitarian law, which could be incorporated into a code of conduct for the military and ethnic armed groups.

36. The ethnic armed groups the Special Rapporteur met during his latest visit retain high levels of mistrust towards the Government and the military. That is partly due to the poor implementation of ceasefire agreements. Establishing a comprehensive system of monitoring will need to form an integral part of the next stage of negotiations. Monitoring groups should be given freedom of movement and include representation from civil society and community-based groups. During his meeting with Aung Min, the Special Rapporteur welcomed the news that progress is being made with the establishment of local monitoring groups, and was encouraged by his openness to future international participation in such monitoring. The United Nationalities Federal Council in Chiang Mai, Thailand informed the Special Rapporteur that international participation in monitoring would play an important role in reassuring the ethnic armed groups that agreements were being implemented and, subsequently, help to build trust.

37. The Government has made clear that political dialogue will follow the signing of a national ceasefire agreement. However, in the Special Rapporteur's meetings with ethnic armed groups, there was deep-seated mistrust that this would happen, which finds its source in a long history of ceasefires which have not led to political dialogue on underlying grievances. The Government will therefore need to set a clear time frame for prompt progress towards political talks following the signing of a national ceasefire accord, and stick firmly to that timetable.

38. In October's monthly radio address (2013), the President acknowledged that ceasefire agreements alone would not lead to lasting peace and that the root causes of the problems would have to be resolved through political means. He also stated that the peace process would only be successful if it was fully inclusive, which the Special Rapporteur welcomes. The Special Rapporteur emphasizes the importance of political dialogue abiding by the human rights principles of participation, transparency, accountability, equality and non-discrimination. This will require greater participation and representation of local communities and women. Ceasefire talks have so far been limited mostly to male leaders on both sides. Addressing those flaws in the process will help to ensure that political talks forge agreements which address the underlying grievances of the ethnic minority groups, including their full range of human rights concerns.

39. The Special Rapporteur notes that, since his visit in August 2013, humanitarian access has improved to the over 50,000 IDPs in non-government controlled areas in Kachin State and northern Shan State. However, access is still granted on an ad hoc basis and he urges the state and national governments to ensure regular, systematic access for humanitarian organizations, including the United Nations.

40. About 400,000 people remain internally displaced in the south-east of Myanmar, with a further 120,000 refugees living in temporary sites along the Thai-Myanmar border. Some of the refugees have been residing in the Thai-Myanmar border camps for more than 25 years. During his latest visit, the Special Rapporteur heard from refugees about their feelings of insecurity when contemplating a return to Myanmar, which included uncertainty about access to land and livelihoods and concerns about how secure their land would be from confiscation by the military or the ethnic armed groups. The Special Rapporteur highlights the relevance of the Guiding Principles on Internal Displacement and the Principles on Housing and Property Restitution for Refugees and Displaced Persons. He

recommends that clauses which protect and promote the land rights of existing, displaced and returning ethnic populations be incorporated into ceasefire and political agreements, and that they include the restitution and recognition of land titles and tenure rights of villagers.

41. The Special Rapporteur welcomes the continuing implementation of the joint action plan to end the recruitment and use of child soldiers signed by the Government and the United Nations in June 2012. On 18 January 2014, 96 children and young persons were released from the Myanmar Armed Forces. This follows earlier releases of 68 children and young people on 7 August 2013, 42 in July 2013, 24 in February 2013 and 42 in September 2012. He encourages the Government to accelerate the identification and release of all children in the national armed forces and border guard forces, including by providing unimpeded access to its military sites by the country task force. The Special Rapporteur commends the recent commitment of the Government of Myanmar to ratify International Labour Organization Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. He urges the Government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict in order to further bolster those positive steps. To prevent future underage recruitment, he recommends the strengthening of recruitment procedures, age verification mechanisms and oversight of all recruitment sites in the country, as well as the bringing to justice of those responsible for child recruitment or use, including those with command responsibility and civilian brokers who assist in the unlawful recruitment of children. Furthermore, he highlights the need for child protection mechanisms to be fully incorporated into peace and ceasefire agreements, and calls for joint action plans to also be drawn up with non-State armed groups.

G. Situation in Rakhine State

42. During his latest visit to Rakhine State, the Special Rapporteur saw no improvements in the human rights situation. Instead, as time passes without clear action at the state and national level to address the widespread discrimination and human rights violations occurring there, the situation continues to worsen from an already dire state.

43. The Government has stated that Buddhist and Muslim communities are separated to maintain stability and protect the lives of the populations from both communities, and has publicly announced its intention to reintegrate communities once trust is rebuilt. In this regard, the Government is working with interfaith groups and is sending messages from the President's Office which promote mutual understanding and peaceful coexistence.

44. The practice of separating communities continues to have a severe impact on the Muslim populations in Rakhine State, and in particular the Rohingya community. Discriminatory and stringent restrictions on freedom of movement for Muslim populations remain in place, which continue to affect a range of other human rights, including the right to life. In February, the Special Rapporteur again visited Aung Mingalar, the only remaining Muslim neighbourhood in Sittwe, which he described as a ghetto. In Aung Mingalar ward, he heard from residents that the population had fallen by around 1,600 compared to his August visit. Many had left to risk their lives on rickety boats to reach neighbouring countries, where those who survived the journey were subjected to further human rights violations, including human trafficking. Residents are still prevented from leaving the quarter by armed guards and wire fencing, and are reliant on food being delivered from a nearby market. Only one medical assistant is provided, by an international NGO, for all 4,375 residents of the ward. In view of the limited access to hospitals, more outreach of medical assistance is required. A limited number of teachers are entering the

ward to provide education for the children. About 700 university students have been unable to gain access to education since May 2012. Working-age residents, many of whom are traders, remain unable to access their livelihoods. The Special Rapporteur also visited the Khoung Dote Khar Rohingya IDP camp in Sittwe. The violations of the rights to freedom of movement, access to health care, education, livelihoods and places of worship he saw in the IDP camp and Aung Mingalar represent a microcosm of the violations suffered by the 140,000 people still in IDP camps and the 36,000 people living in crisis-affected villages across Rakhine State, the vast majority of whom are Rohingya. Of the six hospitals in Rakhine State, only two are currently accepting Muslim patients (with a limited number of beds provided).

45. Ordinary Rakhine Buddhists have a genuine and legitimate desire to have their economic, social and cultural rights respected, promoted and protected after years of neglect. The grievances of the Rakhine Buddhist community must be heard, including with regard to the regulation and management of borders and to immigration policy. Local communities under the poverty line and without electricity have voiced their grievances about not receiving the benefits from projects such as the Kyaukpyu–Kunming dual oil and gas pipeline in Rakhine State, and they need to be listened to. However, the Special Rapporteur is concerned that influential community, political and religious groups are propagating an agenda to rid Rakhine State of the estimated one million Rohingyas who live there. The organizers of hate campaigns (see para. 21 above) and the instigators of violence continue to act with impunity. The United Nations and international NGO actors, who are providing life-saving humanitarian assistance to all communities in Rakhine State, continue to be harassed and threatened by those groups, with some forced to terminate their operations. Local and central authorities are not intervening to fulfil their obligations under international human rights law.

46. Since the violence broke out in June 2012, the Special Rapporteur has highlighted the obligation of the State to hold those responsible for human rights violations to account. Yet up to this point, no credible investigation has taken place to uncover the human rights violations that have occurred there. The Government has prosecuted people from both communities accused of being involved in the violence. However, no State officials have been held to account and, in the absence of an independent and credible investigation, it remains unclear whether the main perpetrators have been prosecuted.

47. During his latest visit, the Special Rapporteur met with the chief of Rakhine State police. He informed the Special Rapporteur that in Du Chee Yar Tan village (in Maungdaw township) on 13 and 14 January 2014, the police conducted a large security operation involving over 100 police officers armed with live ammunition to search for a police officer who was taken by the villagers and reportedly killed. He stated that homes had been searched in the village and surrounding areas, but that no warrant had been secured to do that. He said that journalists and NGOs had been denied access to the village, but that the United Nations and diplomatic community had been on accompanied visits. He denied that there had been any incident that had compromised the physical integrity or property of the villagers. However, the Special Rapporteur has continued to receive allegations of serious human rights violations being committed during that police operation, which also involved Rakhine mobs, including allegations of the brutal killing of men, women and children, sexual violence against women and the looting and burning of properties.

48. The Special Rapporteur is concerned that domestic investigations have so far failed to satisfactorily address these serious allegations. He recognizes that the Government has shown a willingness to engage with the international community on key issues such as forced labour, economic development and even training in international human rights standards for the police and military. He urges that cooperation to extend to one of the most

important challenges that Myanmar is facing, which is to address its long history of impunity. He therefore recommends that the Human Rights Council work with the Government on this latest incident to establish a credible investigation to uncover the truth of what happened in Du Chee Yar Tan and to hold anyone responsible for human rights violations to account. The Special Rapporteur believes that investigations conducted with the involvement and support of the international community, including in relation to technical assistance, represent an opportunity to turn the tide of impunity in Rakhine State.

49. In addition to tackling impunity, the other underlying issue that the Government is failing to address is the systematic discrimination against and marginalization of the Rohingya community. To tackle this requires key legislative changes. For more than 20 years, holders of the special procedures mandate on the situation of human rights in Myanmar have been advocating reform of the 1982 Citizenship Act. Particularly problematic under international human rights law is the provision referring to certain "national" and "ethnic" groups as Myanmar citizens, specified by authorities in a list of 8 "national" and 135 "ethnic" groups. The majority of Myanmar citizens have automatically acquired citizenship under this provision by virtue of belonging to one of those groups. In practice, that has led to "nationals" and "ethnic groups" not contained in those listings being discriminated against on the basis of race and ethnicity in their access to citizenship, including the Rohingya Muslims, as well as persons of Indian, Chinese and Nepali descent, which is in contravention of international human rights law. To bring the Citizenship Act into line with international standards, race and ethnicity cannot be determining factors in the granting of citizenship. Instead, the law needs to provide for objective criteria that comply with the principle of non-discrimination, such as birth in the territory and descent (with citizenship being passed through a parent who is a citizen).

50. The Government has stated that, "it is crucial for non-Rakhine community [sic] to accept the population verification process" that is being proposed as "an initial step for resettlement and access to livelihoods, freedom of movement and citizenship among others".[5] The Special Rapporteur acknowledges that if that exercise is conducted in accordance with international human rights standards, including with regard to consultation with affected communities and enabling ethnic groups to self-identify, it could be an important initiative to help address the issue of citizenship in Rakhine State.

51. Taking into consideration the information and allegations the Special Rapporteur has received throughout the course of his six years on this mandate,[6] including during his five visits to Rakhine State, and in particular since the June 2012 violence and its aftermath, he concludes that the pattern of widespread and systematic human rights violations in Rakhine State may constitute crimes against humanity as defined under the Rome Statute of the International Criminal Court. He believes that extrajudicial killing, rape and other forms of sexual violence, arbitrary detention, torture and ill-treatment in detention, denial of due process and fair trial rights, and the forcible transfer and severe deprivation of liberty of populations has taken place on a large scale and has been directed against the Rohingya Muslim population in Rakhine State. He believes that the deprivation of health care is deliberately targeting the Rohingya population, and that the increasingly permanent segregation of that population is taking place. Furthermore, he believes that those human rights violations are connected to discriminatory and persecutory policies against the

[5] See http://myanmedelhi.com/ministry-of-foreign-affairs-responds-to-mr-tomas-ojea-quintanas-statement-made-on-19-2-2014/.

[6] See A/63/341, paras. 61–62; A/64/318, paras. 70–80; A/HRC/13/48, paras. 86–94; A/65/368, para. 73; A/HRC/16/59, para. 46; A/66/365, para. 29; A/67/383, paras. 56–67; A/HRC/22/58, paras. 46–60; A/68/397, paras. 46–57.

Rohingya Muslim population, which also include ongoing official and unofficial practices from both local and central authorities restricting rights to nationality, movement, marriage, family, health and privacy. In the country's ongoing process of democratic transition and national reconciliation, the human rights situation in Rakhine State will be a critical challenge for the Government of Myanmar and the international community to address.

H. Democratic transition and establishing the rule of law

52. In assessing the reforms that have been initiated so far, the Special Rapporteur stresses that they can only be viewed as the start of a long process of reform that will be required to address the deep-seated human rights issues in Myanmar, which includes developing an independent judiciary and tackling impunity for human rights violations. In that regard, he notes President Thein Sein's comment during his nationwide address on 1 December 2013 that the level of achievement so far is "comparable to a sprout that has just come out of a seed".[7] The Special Rapporteur believes that looking back at the four core human rights elements that he specified at the start of his mandate in 2008 will help to objectively put into perspective how far reforms have progressed and how much further they need to go.

53. The judiciary was the Special Rapporteur's fourth core human rights element. An independent, impartial and effective judiciary is essential for the transition to democracy to uphold the rule of law, ensure checks and balances on the executive and legislative branches of government, and to safeguard human rights and fundamental freedoms in Myanmar. The Special Rapporteur welcomes the President's acknowledgement in September 2013 that the Government needed to work hard to strengthen an independent judiciary so that the rule of law could prevail in the country.

54. However, there has been little progress in introducing fundamental reforms to the judiciary, and the gist of the Special Rapporteur's recommended measures under the fourth core element remain pertinent: establish a judiciary that is impartial and independent, including from the direct control of the Government and the military; guarantee due process of law; refrain from charging individuals for alleged infringement of national laws that are in contravention of the international human rights obligations of Myanmar; establish mechanisms to investigate allegations of human rights violations; and seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles. Most progress has been seen with this final recommended measure; during the Special Rapporteur's latest visit, the Attorney General and the Chief Justice outlined to him a range of trainings, seminars and technical assistance programmes that were taking place with the international community.

55. The required fundamental reforms to the judiciary will need to be initiated by the Government. The Special Rapporteur urges the Government to muster the political will to instigate reforms which fulfil international standards, including the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary and the Beijing Statement of Principles of the Independence of the Judiciary. He also encourages the Government to invite the Special Rapporteur on the independence of judges and lawyers to conduct a country visit to Myanmar in the near future to assist with the development of a programme of reform.

[7] See www.myanmargeneva.org/pressrelease/radio%20speech%201%20dec.pdf.

56. The Special Rapporteur reiterates the role of lawyers in establishing the rule of law in Myanmar, including in upholding fair trial rights and in helping to ensure that laws are applied in line with international human rights standards. He remains concerned about the lack of protection of lawyers against reprisals, including violence, threats and discrimination, particularly for those involved in cases considered to be politically sensitive. He urges the parliament to amend the Bar Council Act to transform the Bar Council into a self-governing professional association to defend the integrity and independence of the profession and maintain professional standards in accordance with the Basic Principles on the Role of Lawyers and other international standards. He highlights the responsibility of all branches of government to ensure the protection of lawyers against reprisals and, furthermore, recommends that the parliament reform the contempt of court laws to ensure that lawyers cannot be subjected to sanctions because of their association with politically sensitive cases.

57. While the Myanmar National Human Rights Commission, established by Presidential decree in September 2011, has undertaken some good initiatives, the Special Rapporteur highlights that it is not an independent institution. Noting that the international community has provided technical advice on a new draft enabling law, he stresses the importance of the parliament passing a law which establishes a Commission in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), including with regard to the selection of commissioners.

58. Regarding the review of national legislation referred to in the first core human rights element, the Special Rapporteur observes that, of the 16 laws and sections of the Penal Code originally identified as in need of reform (A/63/341, para. 93), only one has been repealed (the Law Protecting the Peaceful and Systematic Transfer of State Responsibility and the Successful Performance of the Functions of the National Convention against Disturbance and Oppositions); the rest are under consideration by the parliament or the relevant ministries (A/68/397, para. 67).

59. Furthermore, for national reconciliation and the democratic transition to proceed, important changes to the Constitution are also needed. The 109-member joint committee for reviewing the 2008 Constitution, set up by the parliament on 25 July 2013, reported at the end of 2013 that it had received 28,247 letters of suggested reforms from the executive, legislative and judicial branches of Government. The Special Rapporteur welcomes the President's remarks in January 2014 that a healthy constitution must be amended from time to time to address the national, economic and social needs of Myanmar society, to strengthen democratic attitudes and values and to facilitate national reconciliation and the peace process.

60. Reforms to the Constitution will be needed to embrace the aspirations of ethnic communities to have their human rights respected, to have a say in Government decisions and to benefit from the resources held within their lands. Furthermore, to ensure the accountability of all State institutions under the rule of law, it is necessary to bring the military under civilian control and oversight, which requires amendment of article 20 (b), which currently gives the military "the right to independently administer and adjudicate all affairs of the armed forces", as well as of article 445, which currently states that "no proceeding shall be instituted against the said [previous] Councils or any member thereof or any member of the Government, in respect of any act done in the execution of their respective duties". The following constitutional provisions require amendment for the overall transition to a democratic system of civilian governance to proceed: provisions which allow for military appointees to occupy 25 per cent of seats in the parliament (arts. 74, 109 (b) and 141 (b)), thereby also providing them with an effective veto on constitutional changes; article 232 (b), which requires the President to appoint the ministers of Defence, Home Affairs and Border Affairs from lists of

nominees (who can include serving military officers) provided by the Commander-in-Chief; and article 40 (c), which authorizes the Commander-in-Chief to assume State sovereign power under a broad set of vague conditions related to a state of emergency. To allow the people of Myanmar to freely choose their Government, the constitutional provisions that currently disqualify persons from standing for election as President or Vice-President, including on grounds of the nationality and birthplace of their parents (art. 59 (b)), the length of time that they have resided in Myanmar before the election (art. 59 (e)) and the nationality of their spouse, their children and the spouses of their children (art. 59 (f)), also require amendment. Furthermore, the Constitution needs to affirm that the fundamental human rights of all people living in Myanmar need to be respected, and not just those of the citizens of Myanmar.

61. The third core human rights element concerns the armed forces. Important progress has been made in tackling the recruitment of child soldiers (see para. 41 above) and forced labour (A/67/383, para. 32), and engagement with the international community has begun on training programmes on human rights for members of the armed forces, as well as police and prison personnel (although the Special Rapporteur expresses his disappointment that the Commander-in-Chief did not agree to meet with him once during his entire six years on the mandate, and stresses the need for the military to engage with the international community on human rights). The use of landmines has decreased significantly, although there has been limited progress in mine surveying and clearance, marking or fencing, with an estimated 5.2 million people continuing to live in areas contaminated by landmines, and Myanmar has not ratified the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction. Furthermore, violations of international human rights and humanitarian law continue where military operations are ongoing (see para. 34 above), and there is no progress in tackling the impunity under which the military forces currently operate.

62. Most progress has been made with the second core human rights element: the progressive release of political prisoners (see para. 4 above). However, the releases have not been without conditions, with article 401, paragraphs 1, 3 and 4, of the Code of Criminal Procedure allowing the application of penalties, such as the imposition of the remaining sentence, if a condition of release is judged by the President to have been broken.

63. Reflecting on progress with the four core elements in mind reminds us how far the reforms still need to go. The Special Rapporteur believes that, in pursuing those reforms in line with international human rights standards, the Government would benefit greatly from the presence of an Office of the United Nations High Commissioner for Human Rights (OHCHR) country office with a full toolbox. He is therefore concerned that progress towards its establishment continues to be slow, nearly a year and a half since the invitation was made by the Government, and encourages more speedy progress.

I. Truth, justice and accountability

64. The Special Rapporteur emphasizes that a truthful account of past human rights violations is needed to inform the ongoing process of democratic reform and national reconciliation. He continues to encourage the parliament to take forward the initiative to establish a truth commission as a step towards ensuring truth, justice and accountability. He also encourages other initiatives, some of which have already begun, such as commemorations, memorials and documentation of the past.

65. The Special Rapporteur underlines that fulfilling the rights to truth, justice and reparation is an important step towards addressing impunity for human rights violations in Myanmar. Furthermore, justice contributes to lasting reconciliation.

III. Conclusions

66. Throughout his six years on the mandate, the Special Rapporteur has seen significant changes in Myanmar that have brought important improvements to the human rights situation, including the release of over 1,100 prisoners of conscience, the opening up of space for freedom of expression, the development of political freedoms and the holding of free and fair by-elections, and important progress in securing an end to fighting in the ethnic border areas. He believes that there is limited space for backtracking, although the democratic transition is still in its early stages and remains fragile.

67. For the time being, the military retains a prevailing role in the life and institutions of Myanmar. State institutions in general remain unaccountable and the judiciary is not yet functioning as an independent branch of the State. Moreover, the rule of law cannot yet be said to exist in Myanmar. In that regard, tackling the impunity and systematic discrimination in Rakhine State represents a particular challenge which, if left unaddressed, could jeopardize the entire reform process.

68. A change of mindset still needs to take place within all levels of Government to allow civil society, political parties and a free media to flourish beyond the limited freedoms that have currently been granted. The energy and enthusiasm of the younger generation and of women needs to be allowed to come through, which will, in turn, reinvigorate the reform process and ensure that Myanmar secures a successful transition. As part of the transition, addressing the past will also become increasingly important.

69. A critical step will be to secure ceasefire and political agreements with ethnic minority groups, so that Myanmar can finally transform itself into a peaceful multi-ethnic and multi-religious society.

70. The transition in Myanmar requires systematic support from the international community, including in the form of technical assistance and capacity development. It will also be essential for Myanmar to build on its progress of engagement on human rights, which should include the establishment of an OHCHR country office with a full mandate.

71. The Special Rapporteur hopes that his time on this mandate has helped to improve the human rights situation of the people of Myanmar. After nine visits to the country, he is aware of the value that the people place on this mandate, and highlights the importance of it continuing to help keep human rights near the top of the reform agenda of Myanmar.

72. The Special Rapporteur praises the cooperation extended by the Government of Myanmar to this mandate. He believes that this cooperation represents a good example of how States can progress on human rights through engagement with the international community as envisioned in the Charter of the United Nations.

IV. Recommendations

73. Regarding prisoners of conscience, the Government should:

(a) Continue to convene meetings of the prisoner review committee and upgrade the status of the committee to enable it to investigate suspected cases of prisoners of conscience, including in Rakhine State, which entails access to prisons and the authority to question relevant state officials;

(b) Remove all conditions attached to released prisoners of conscience and fulfil its human rights obligations towards former prisoners of conscience, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

74. The parliament should prioritize the amendment of laws that continue to be used to detain prisoners of conscience, including article 18 of the Peaceful Assembly and Peaceful Procession Act, the Unlawful Associations Act, the Emergency Provisions Act and article 505 (b) of the Penal Code. In the meantime, the relevant authorities, including the police and the courts, should cease to use those or other laws to arbitrarily detain and convict people.

75. To tackle the continuing practice of torture in places of detention, the Government should:

(a) Prioritize the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto;

(b) Ensure that police and military officers alleged to have committed acts of torture and ill-treatment are held accountable through the criminal justice system;

(c) Expedite the passing of a new prisons law that meets international standards;

(d) Abolish the death penalty.

76. In relation to the right to freedom of opinion and expression, the Government should:

(a) Ensure that the Printing and Publishing Enterprise Bill and the Broadcast Media Bill meet international human rights standards, including with regard to government licensing powers and content regulation;

(b) Expedite the passing of the media law drafted by the Interim Press Council;

(c) Expedite the abolition or review of the Electronic Transactions Act (2004), the Motion Picture Act (1996), the Computer Science Development Act (1996), the Television and Video Act (1985), the Printers and Publishers Registration Act (1962), the Wireless Telegraphy Act (1933), the Emergency Provisions Act (1950) and the State Protection Act (1975) to bring them into line with international human rights standards;

(d) Remove provisions in defamation laws which provide for prison sentences;

(e) Make greater use of the Interim Press Council to help resolve disputes.

77. To tackle the problem of hate speech, the Government should investigate the nature and extent of the harm caused to persons and groups as a result of the hostility and violence incited by certain individuals and groups on the basis of racial or religious hatred, and hold the perpetrators to account.

78. To address shortcomings in upholding the rights to peaceful assembly and association, the Government should:

(a) Amend the Peaceful Assembly and Peaceful Procession Act, including article 18, to replace the permit system with a notification system that is not subject to criminal sanctions;

(b) Ensure that the draft association law is amended to remove criminal sanctions and replace the registration procedure with a voluntary notification procedure, and ensure the concomitant review/abolition of the Act relating to the Formation of Organizations and the Unlawful Associations Act;

(c) Invite the Special Rapporteur on the rights to freedom of peaceful assembly and of association to visit the country, and ratify the International Covenant on Civil and Political Rights.

79. In relation to human rights concerns in the context of development, the Government should:

(a) Establish a system of individual titling and tenure rights for smallholders to protect people against land appropriation and forced evictions;

(b) Put in place a collective or communal tenure system for land, fisheries and forests to protect the access of local communities to common goods and ensure that the land can be converted to new uses only with their free, prior and informed consent;

(c) Abide by the basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex I);

(d) Ensure that people peacefully protesting forced evictions and land confiscations are not subjected to excessive use of force by the police or arbitrary detention and criminal prosecution;

(e) Ensure that the recommendations from the Letpadaung parliamentary commission and the environmental and social impact assessment are fully implemented;

(f) Make environmental and social impact assessments a legal requirement for all large-scale development projects in Myanmar and ensure that human rights impact assessments are incorporated;

(g) Abide by the guiding principles on human rights impact assessments of trade and investment agreements (see A/HRC/19/59/Add.5);

(h) Continue the good progress in preparing for Extractive Industries Transparency Initiative candidature.

80. The Special Rapporteur also calls on all investors and businesses to abide by the Guiding Principles on Business and Human Rights.

81. Regarding the situation in ethnic border areas, the Government and, where applicable, the ethnic armed groups should:

(a) Abide by humanitarian and human rights law in areas where armed conflict continues;

(b) Establish a comprehensive system for monitoring the implementation of ceasefire and political agreements, which includes representation from civil society, community-based groups and the international community, and guarantee the freedom of movement of monitors;

(c) Set a clear time frame for prompt progress towards political talks following the signing of a national ceasefire accord, and stick firmly to that timetable;

(d) Ensure that political negotiations abide by the principles of participation, transparency, accountability, equality and non-discrimination, and

subsequently provide for greater participation and representation of local communities and women;

(e) Ensure regular systematic access to non-government controlled areas in Kachin State for humanitarian organizations, including the United Nations;

(f) Abide by the Guiding Principles on Internal Displacement and the Principles on Housing and Property Restitution for Refugees and Displaced Persons;

(g) Ensure that any return of refugees, asylum seekers and internally displaced persons is carried out voluntarily, in safety and with dignity;

(h) Incorporate into ceasefire and political agreements clauses which protect and promote the land rights of existing, displaced and returning ethnic populations, including the restitution and recognition of land titles and tenure rights of villagers;

(i) Ratify the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction and begin to undertake mine survey, clearance, marking and fencing activities in ethnic border areas;

(j) Accelerate the identification and release of all children in the national Armed Forces and border guard forces, including by providing unimpeded access to its military sites by the country task force;

(k) Ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

82. **The Special Rapporteur calls for joint plans of action on child soldiers to also be drawn up with non-State armed groups.**

83. **Regarding Rakhine State, the Special Rapporteur recommends that the Government:**

(a) Ease the disproportionate and discriminatory restrictions on the freedom of movement of Muslim populations;

(b) Ensure safe access to humanitarian organizations providing life-saving assistance, including health care, for the IDP camps and isolated villages in Rakhine State;

(c) Reverse the increasingly permanent policy of separation and segregation of communities by taking positive steps to rebuild integrated communities, which includes upholding the right of people to return to their land and property;

(d) Release, immediately and without conditions, Tun Aung, Kyaw Hla Aung and Than Shwe, and the three international NGO workers, who have been arbitrarily detained;

(e) Ensure that the due process and fair trial rights of all defendants in Rakhine State are upheld;

(f) Bring the Citizenship Act into line with international standards, by providing for objective criteria in the granting of citizenship that comply with the principle of non-discrimination, such as birth in the territory and descent (with citizenship being passed through a parent who is a citizen);

(g) Ensure that all children who are born in Myanmar and who do not have a right to the nationality of another State are able to acquire Myanmar citizenship,

regardless of the status of their parents, and provide for naturalization under a revised citizenship law.

84. **In view of the failure of the Government to conduct a credible and independent investigation into the allegations of widespread and systematic human rights violations in Rakhine State which may constitute crimes against humanity, particularly since the outbreak of the violence of June 2012, and as a measure to help turn the tide of impunity in Rakhine State, the Special Rapporteur calls on the Human Rights Council to work with the Government to establish a credible investigation to uncover the truth of what happened in Du Chee Yar Tan on 13 and 14 January 2014 and to hold anyone responsible for human rights violations to account.**

85. **Regarding the transition to democracy and establishing the rule of law, the Special Rapporteur recommends that the Government:**

(a) Initiate fundamental reforms to establish a judiciary that is impartial and independent, including from the direct control of the Government and the military;

(b) Guarantee due process of law;

(c) Refrain from charging individuals for alleged infringement of national laws that are in contravention of the international human rights obligations of Myanmar;

(d) Establish mechanisms to investigate allegations of human rights violations;

(e) Continue to seek international technical assistance with a view to establishing an independent and impartial judiciary that is consistent with international standards and principles, including by inviting the Special Rapporteur on the independence of judges and lawyers to conduct a country visit;

(f) Increase salaries and pensions for judges to decrease incentives for corruption, and establish a mechanism to conduct prompt and effective investigations into allegations of corruption in the judiciary;

(g) Expedite the establishment of an OHCHR country office with a full mandate to assist with these and other reforms.

86. **The Special Rapporteur urges the parliament to:**

(a) Amend the Bar Council Act to transform the Bar Council into a self-governing professional association to defend the integrity and independence of the profession and maintain professional standards;

(b) Reform the contempt of court laws to ensure that lawyers cannot be subjected to sanctions because of their association with politically sensitive cases;

(c) Expedite the abolition or review of the laws referred to in paragraphs 74, 76 (c) and 78 (b) of the present report, articles 143, 145, 152, 505, 505 (b) and 295A of the Penal Code, the Code of Criminal Procedure and the Official Secrets Act, to ensure their compliance with international human rights standards;

(d) Ensure that new legislation combats and does not increase discrimination against women, racial, ethnic and religious minorities, the lesbian, gay, bisexual, transgender and intersex community, persons with disabilities or other groups and is in full compliance with the obligations of Myanmar under the Convention on the Elimination of All Forms of Discrimination against Women, the

Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities;

(e) Adopt a law that brings the Myanmar National Human Rights Commission into line with the Paris Principles, including with regard to the selection process for its members;

(f) Initiate a process of consultation with all relevant stakeholders on the feasibility and desirability of establishing a truth commission;

(g) Amend the Constitution to bring the armed forces under civilian control, including articles 20 (b), 445, 343 (b), 74, 109 (b), 141 (b), 232 (b) and 40 (c);

(h) Amend the Constitution, including article 59 (b), (e) and (f), to allow the people of Myanmar to freely choose their Government. Furthermore, the Special Rapporteur recommends that amendments be adopted to ensure that the Constitution affirms the fundamental human rights of all people in Myanmar and not just its citizens.